EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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European Court rejects as inadmissible complaints concerning financial-emergency measures in Slovenia

In its decision in the case of Kotnik and Jukič v. Slovenia (nos. 56605/19 and 25424/23) the European Court of Human Rights has unanimously declared the applications inadmissible. The decision is final.

The case concerned the emergency measures taken by the Bank of Slovenia in 2013 and 2014 to protect the financial system. As a result of the measures, subordinated bonds and shares belonging to the applicants had been voided without compensation.

The applicants complained in particular that the Slovenian authorities had failed to implement a European Court judgment of 2021 in their favour. That judgment had ruled that it was essential that former holders of cancelled shares or bonds had a legal avenue to effectively challenge the interference with their property rights.

The Court noted that in 2024 a new law had come into force allowing former holders of cancelled bonds or shares to bring legal actions against the Bank of Slovenia, with the possibility of damages being awarded. It therefore rejected the applicants' complaints because they had not yet used all the legal avenues available at national level.

A legal summary of this case will be available in the Court's database HUDOC (link).

Principal facts

The applicants, Tadej Kotnik and Luka Jukič, are Slovenian nationals who were born in 1972 and 1974 respectively. They live, respectively, in Ljubljana and Žužemberk (Slovenia).

In 2013 and 2014 the Bank of Slovenia took emergency measures to protect the financial system. The decisions affected major Slovene banks, including Celje bank and Nova KBM bank.

Mr Kotnik owned 3,365 subordinated bonds in Celje bank, while Mr Jukič owned 4,850 shares in Nova KBM bank. As a result of the emergency measures, the applicants' subordinated bonds and shares were voided without compensation. Consequently, Mr Kotnik was also unable to receive payment of coupon interest related to his subordinated bonds.

A number of attempts ensued to provide former holders of cancelled bonds and shares with a legal remedy to challenge the measures in question. In particular, in 2016 the Slovenian Constitutional Court ordered the legislature to create an appropriate legal framework. A new Law was enacted in 2020, but it was suspended less than three months after it had entered into force, pending a request by the Bank of Slovenia for a review of its constitutionality and a request for a preliminary ruling lodged with the Court of Justice of the European Union (CJEU). Most recently, in 2023, after the CJEU delivered its judgment, the Constitutional Court revoked the 2020 Law and ordered the legislature to enact a new law to protect the rights of the former holders of the cancelled bonds and shares, while respecting the Bank of Slovenia's independence.

In the meantime, the applicants in the current case and other former holders of cancelled bonds or shares had lodged applications (*Pintar and Others v. Slovenia* nos. 49969/14 and 4 others) with the European Court complaining about an interference with their property rights. The Court had ruled in 2021 in the *Pintar and Others* case that there had been a violation of Article 1 of Protocol No. 1 (protection of property) to the Convention. It had also noted that there were thousands of

individuals and entities in a similar situation and that it was essential that they had a legal avenue to effectively challenge the interference with their rights.

The implementation of this judgment is still ongoing before the Committee of Ministers, the executive arm of the Council of Europe responsible for supervising the implementation of the European Court's judgments. Most recently, in June 2024 the Slovenian Government submitted a report informing the Committee of Ministers that Parliament had enacted a Law on the matter.

Complaints, procedure and composition of the Court

The applications were lodged with the European Court of Human Rights on 24 October 2019 and 16 June 2023, respectively.

Relying on Articles 6 § 1 (right to a fair trial), 13 (right to an effective remedy) and Article 1 of Protocol No. 1 (protection of property), the applicants complained that the Bank of Slovenia's emergency measures and related court decisions had violated their property rights. They argued in particular that they continued to lack access to any effective means to challenge the measures in question, because of the Slovenian authorities' failure to implement the *Pintar and Others v. Slovenia* judgment.

Mr Kotnik also complained that the interest payments on his bonds had been retroactively revoked.

The decision was given by a Chamber of seven judges, composed as follows:

Ivana **Jelić** (Montenegro), *President*,
Erik **Wennerström** (Sweden),
Marko **Bošnjak** (Slovenia),
Alena **Poláčková** (Slovakia),
Georgios A. **Serghides** (Cyprus),
Raffaele **Sabato** (Italy),
Alain **Chablais** (Liechtenstein),

and also Ilse **Freiwirth**, *Section Registrar.*

Decision of the Court

The Court noted that the applicants had lodged their applications in 2019 and 2023, when domestic law had not provided an effective solution for their respective situations.

However, a new law had now come into force allowing former holders of cancelled bonds or shares to bring legal actions against the Bank of Slovenia and providing for damages to be awarded by the Republic of Slovenia. This new law covered access to previously unavailable documentation on the Bank of Slovenia's 2013 and 2014 decisions; a potential settlement scheme; and the possibility of bringing collective legal actions.

Establishing liability for the financial losses incurred was a complex one, but the Court noted that the process was subject to time-constraints and legal actions were being given priority treatment.

The legislation, which had been enacted following careful scrutiny by the Constitutional Court and the CJEU of the previous laws governing the issue, had been in force since June 2024 and was currently being implemented.

Consequently, the Court found that the applicants should use this remedy now available to them and/or any directly related accessible and effective remedies before the Constitutional Court. It bore in mind in particular that the cancellation of shares and bonds in 2013 and 2014 had affected thousands and that it had already decided in other cases involving systemic violations of the

Convention that applicants should use all the legal avenues available to them at national level, even if the applications had been lodged prior to the enactment of new legislation, as was the case here.

As concerned Mr Kotnik's complaint, which concerned the interest payments on his bonds rather than their cancellation, the Court noted that he had not pointed to any provisions in the new legislation that would prevent him from claiming damages.

The applicants' complaints were therefore rejected for "non-exhaustion of domestic remedies". This was in line with the principle that the national authorities should first have the opportunity to put matters right through their own legal system.

The Court did, however, emphasise that the claims of former holders of cancelled bonds or shares should be determined speedily, bearing in mind the amount of time that had already gone by since the emergency measures had been taken.

The decision is available only in English.

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Press contacts
echrpress@echr.coe.int | tel: +33 3 90 21 42 08

We are happy to receive journalists' enquiries via either email or telephone.

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)
Inci Ertekin (tel: + 33 3 90 21 55 30)
Neil Connolly (tel: + 33 3 90 21 48 05)
Jane Swift (tel: + 33 3 88 41 29 04)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.